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IN THE SUPREME COURT OF THE UNITED STATES.

AH HOW, ALIAS LOUIE AH HOW, APPELLANT, v. THE UNITED STATES.	No. 307.
CHU DO, ALIAS CHU GOO, APPELLANT, v. THE UNITED STATES.	No. 308.
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TOM DOCK, ALIAS HOM DOCK, APPELLANT, v. THE UNITED STATES.	No. 311.
YUNG LEE, APPELLANT, v. THE UNITED STATES.	No. 312.
LEE KIT, APPELLANT, v. THE UNITED STATES.	No. 313.

BRIEF FOR APPELLANTS ON APPEALS FROM ORDERS OF DEPORTATION.

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Brief for Appellants on Appeals from Orders of Deportation.

These are appeals from orders entered in the District Court of the United States, in and for the Eastern District of New York, affirming orders of deportation made by B. Lincoln Benedict, Esq., a United States Commissioner of the said District, directing the deportation of these appellants from the United States to China, upon the ground that they were found in the United States without certificate of residence.

Direct appeals were taken to this Court upon the ground that Treaty and Constitutional questions were involved. (Chin Bak Kan *v.* U. S., 186 U. S., 193; U. S. *v.* Gue Lim, 176 U. S., 459; U. S. *v.* Wong Kim Ark, 169 U. S., 649.) The Treaty and Constitutional questions were raised upon the preliminary hearing before the Commissioner.

The complaints, taken under Section 6 of the Act of May 5th, 1892, as amended by the Act of November 3rd, 1893, charged that the defendants, being Chinese laborers not entitled to remain in the United States without a certificate, "*did knowingly and wilfully* * * * *fail to obtain* * * * *a certificate,* * * * and having come unlawfully into the United States without a certificate," were "found within the jurisdiction of the United States at Brooklyn, in said District, without a certificate of residence as required by law." The same form of complaint was made in each case. (See page 1 of record in each case.)

These are the first cases which have come before this Court in which a construction of the Act of April 29th, 1902, re-enacting, extending and continuing all laws relating to the subject of Chinese exclusion, "so far as the same are not inconsistent with treaty obligations" is asked.

These are the first cases which have come before this Court since the Fong Yue Ting case (149 U. S., 698), in which a consideration of the registration provisions of

the Act of 1892, as amended by the Act of 1893, is involved.

These are in no sense "entry cases." The defendants were not arrested while seeking entrance to the United States, nor shortly after effecting entrance. The complaints assumed that the defendants were residents during the registration period fixed by the Acts of 1892 and 1893, and not a particle of testimony was introduced by the Government to controvert the fact of long years of residence in the United States, affirmatively established by each defendant. (In this connection it may be said that these are the first cases in this Court since the Fong Yue Ting case, in which the defendants were at the time of arrest actually residing in the United States.)

As is pointed out, at page 13 in the appellants' brief in opposition to the motion to vacate orders for bail and to dismiss or affirm appeals, there are no disputed questions of fact which this Court is asked to review. The appellants come to this Court purely upon questions of law, including, among other questions, errors in the determination of questions of law presented on the facts. Despite the assertion of the learned Solicitor-General, at page 7 in his brief on the motion to dismiss or affirm, it is respectfully urged that the questions here are entirely new—have never been determined by this Court.

As to the questions presented for review, reference is again respectfully made to the statement thereof, contained on pages 7, 8, 9 and 10 of appellants' brief in opposition to the motion to dismiss, &c.

Before entering upon a review of the facts in these cases, the Court's attention is asked to the review of the situation—the "history of the times"—under which these arrests were made, on page 4 of the appellants' brief in opposition to the said motion.

While not approving in full measure, the introduction of this not strictly relevant matter, the appellants believe, that its presentation to the Court is, amply justified at least as an answer to the argument of the learned Solicitor-General, both in his brief on the motion to dismiss or affirm and his reply brief on matters which should be directed to the legislative motion rather than

to the judicial department of the government. It is as well to call the attention of the Court to the fact that some of the Government officials charged with the enforcement of these laws are not wholly without sin,—that the Chinese have not a monopoly thereof.

Facts.

These Cases may be Divided into Three Groups.

I.—Those where the status of merchant, during the registration period fixed by the Acts of 1892 and 1893, was claimed. (Including the cases of Ah How, alias Louie Ah How, No. 307; Tom Hong, alias Hom Poe, No. 310; Tom Dock, alias Hom Dock, 311; and Lee Kit, 313).

II.—Those where American citizenship was claimed. (Including cases of Chu Do, alias Chu Gee, No. 308, and Lew Guey, No. 309); and

III.—One case where the status of laborer, during the registration period was admitted, but where it was claimed that by reason of illness during that period the defendant was unable to procure a certificate. (Yung Lee, No. 312).

The Merchant Cases.

Three of these cases, Tom Hong, alias Hom Poe, No. 310; Tom Dock, alias Hom Dock No. 311 and Lee Kit, No. 313, present substantially the same facts. They were copartners with others in the Chinese groceries business, at 15 Doyer Street, in the City of New York, as members of the firm of Kwong Yen Ti Company, from the years 1891 to 1895, inclusive when the business closed up (fols. 13, 17 & 18, Tom Dock record). Tom Dock has been in the United States for over thirty years. Tom Hong has been in the United States about twenty years, over ten years of which was spent in New York (fol. 13, Tom Hong record). Tom Hong and Tom

Dock were arrested at the same place, No. 510 Myrtle Avenue and the third, Lee Kit, was arrested a block away on Myrtle Avenue.

The witness Feldman, who testified in all three cases was the agent of the premises No. 15 Doyer Street. He swore that he saw the defendant Tom Dock sign the lease (fol. 31, Tom Dock record). That he collected rents from each of the defendants; that he saw each of them selling and receiving goods and shipping goods. He was introduced to each of the defendants as partners at the time they entered into possession of the premises and he was shown the copartnership articles (fol. 46, Tom Dock record). The occasion of their telling him that they were copartners and showing him the copartnership articles was when he went to collect the first rent and he was told because of the fact that he was the collector of the landlord (fols. 15-16, Lee Kit record).

The witness O'Brien, an expressman, who also testified in each case stated that he went to the place of business of the Kwong Yen Ti Company twice a day regularly, bringing goods from there and taking goods there. That he saw each of the defendants selling goods. That he received money from each of the defendants for the goods that he delivered (fol. 23, Lee Kit record; fol. 21, Tom Hong record; fol. 32, Tom Dock record).

There was no dispute whatever as to the fact that these men were engaged in business at that time. In fact the Commissioner expressly so held, saying in his opinion:

> "The proofs furnished in these cases are sufficient to show that these three persons were engaged in business rather than in manual labor in 1894" (Tom Hong record, page 17; Lee Kit record, page 18; Tom Dock record, page 30).

The Commissioners' findings on the facts were clearly justified.

That the Government recognized the importance of the Commissioner's findings in this regard is manifested

by the fact that they vigorously opposed the inclusion of these findings in the record, it necessitating an application to the District Court for an order directing the Clerk of the Court to annex the opinion of the Commissioner to the record of the appeal, which motion was duly granted after opposition (fol. 76, Tom Dock record; fol. 44 Tom Hong record; fol. 50 Lee Kit record).

In the Ah How, alias Louie Ah How case, No. 307, the judgment of the Commissioner is clearly erroneous. He states in the recital that the said Ah How, "by his counsel, claimed to have been born in the United States and to be lawfully entitled and to be and to remain therein," and he expressly found and states in the said judgment that the said Ah How was not born in the United States (fol. 4, Ah How Record). No such claim was made by counsel or by the defendant, nor was any testimony to support such claim offered. This is clearly a case where the offense charged was not proven and the offense proven was not charged.

The claim made for this defendant was that his status was that of a merchant during the registration period. The testimony supporting this claim was offered by the defendant and by the same witness, who the Commissioner declared was a credible white witness in the Yung Lee case. (See fol. 51, Yung Lee Record.) This witness testified to an acquaintance with the defendant of upwards of twelve years (page 7, Ah How Record). Saw him handling goods about twelve years before at Number 34 Mott Street, New York City, and saw him engaged in that same place and in the same business for three years after that, and heard him say that he was a partner.

In all of these cases the only proof offered by the Government consisted of testimony to the effect that each of these defendants was found working in a laundry in Brooklyn on July 24th, 1893, and failed to produce a certificate when one was demanded.

In the case of Chu Dow, No. 308, the Government proved merely that on the 23rd day of July, 1902, the defendant was found working in a laundry at 137½ Duffield Street, Brooklyn, and that he failed to produce a registration certificate when its production was demanded by the Chinese Inspector, whereupon the defendant was placed under arrest (fols. 12-17, Chu Dow Record). The Government then rested. The defendant showed that his father had been taken sick; that he had been in the office of defendant's counsel the day before the hearing (fol. 20), and that an affidavit from the father was offered (fol. 21) as the basis for asking for an adjournment. That at the adjourned day an uncle of the defendant appeared; he testified that the defendant was born twenty-six years before at 947 Sacramento Street, San Francisco, and that he, the uncle, saw him there at that time; the uncle then being a resident of San Francisco (fol. 24). On cross-examination the witness showed he was a merchant and a member of a firm engaged in the grocery business at No. 4 Pell Street, in the City of New York. He outlined his whole career while in the United States.

The Lew Guey case, No. 309. In this case the Government proved that the defendant was arrested on July 23rd, 1902, while working as a laundryman at 192 Myrtle Avenue, Brooklyn; that defendant produced a certificate (fol. 9), signed by Felix W. McGettrick, a United States Commissioner, showing that on a hearing before him it had been adjudged by him that the said Lew Guey had a lawful right to remain in the United States by reason of being a citizen thereof. Notwithstanding the production of this certificate the defendant was taken into custody (fol. 9).

The defendant testified that he was born twenty years before in San Francisco, California (fol. 13); that he lived in Richford, Vermont, in 1897; that he had a hearing before United States Commissioner there. That after the hearing the paper (certificate of Commissioner McGettrick) was handed to his father, who

handed it to him. That he has been in New York ever since (fol. 15). That his father had died about two years before. That on returning to the United States, in 1897, after having been in China, he came through Canada to Richford, Vermont, alone, and was tried there and discharged and allowed to come on to New York (fol. 17). He described the judge before whom he was tried. Said that his father appeared as a witness (fol. 18). The certificate was admitted in evidence to prove the fact of a hearing before Mr. McGettrick (fol. 26). It was excluded as a record of a judgment by a United States Commissioner finding that Lew Guey was a citizen of the United States.

> "Mr. McManus: I further offer this certificate as a record of a judgment of the United States Court by a United States Commissioner, finding that Lew Guey is a citizen of the United States.
>
> "Objected to. Objection sustained. Exception" (fol. 27).

The Sick Laborer Case.

Yung Lee, No. 312. The same character of evidence was offered by the Government as to finding the defendant working in a laundry and failing to produce a certificate when its production was demanded. The defendant showed that he had been in the United States twenty-three years. That he was a laundryman during the years 1893 and 1894. That he was ill from rheumatism from November, 1893, to August, 1894. That it kept him to his bed for several months. That he was ill at 158 Forsyth Street, City of New York (fol. 12), during that period. That he could not walk during that period (fol. 14).

A witness whom the Commissioner designated as a credible white witness (fol. 12) testified to knowing the defendant in the City of New York for upwards of twenty-two years. That he knew him for twelve years at 158 Forsyth Street in the City of New York. That he saw the defendant in bed for several months sometime in 1893 (fol. 17).

The Commisioner found that the defendant was a resident of the United States on the 5th of May, 1892, but stated in his decision that it had not been clearly established to his satisfaction that the defendant was unable, through sickness, during *all the time* given by the Statute, to obtain a certificate of residence. The judgment in this case was in the same form as that rendered in the Ah Low case. The Commissioner stated that citizenship claim was made, and adjudges that defendant was not a citizen. No such claim was made.

Not a line of the testimony in any of these cases was controverted by the Government. If the ordinary rules of evidence as to burden of proof were followed in these cases, the Court would have been compelled to discharge each of these defendants.

It is because of the very rule as to burden of proof being on Chinese persons, as required by §3 of act of 1892 that these defendants have appealed to this Court, contending that under the treaty of 1894, and the Act of 1902, the rigor of this rule does not apply to them *as residents of the United States.* Admitting that while as to Chinese laborers seeking entrance to the United States, this statute is still in force, it is urged that Congress intended by the Act of 1902 to release them from this onerous and arbitrary provision.

POINT I.

Section 3 of the Act of 1892, placing the burden of proof on Chinese defendants and section 6 of the same act as amended by the Act of 1893, in so far as it relates to the deportation of Chinese residents of the United States, have all been revoked or superceded by Section 1 of the Act of April 29, 1902, which (in providing for the re-enactment of the Chinese exclusion laws only in so far as the same were not inconsistent with treaty obligations) assures to Chinese persons, *either permanently or temporarily residing in the United States* for the protection of their persons and property, all rights given by the laws of the United States to citizens of the most favored nation (Article 4 of the Treaty of 1894); the sections above mentioned being inconsistent with said treaty provision.

(The argument presented upon this point in some measure is in some respects a *resumé* of the argument presented in Point I of appellants' brief in opposition to the motion to dismiss, etc.).

There is no claim made here that the Government may not exclude Chinese aliens as it may see fit for the protection of, or in the interests of its own subjects, regardless of treaty obligations,—regardless of whether the alien is an immigrant or a resident.

That the Government has this power is too well settled to require citation of authority.

The appellants' contention is briefly this:

Earlier legislation on the subject of Chinese exclusion was concededly in violation of treaty obligations with China. (Chae Chang Ping *v.* U. S. (130 U. S., 581); Lem Moon Sing *v.* U. S. (158 U. S., 538): Fong Yue Ting *v.* U. S. (149 U. S., 697); U. S. *v.* Gue Lim (176 U. S., 459, 464).

Even after judicial expression on this subject, Congress, with "malice aforethought," re-enacted this legislation.

> Acts of May 5th, 1892, and November 3rd, 1893.

But in 1902, the situation had changed; the necessity for these rigorous and despotic measures against Chinese residents of the United States no longer existed and Congress advisedly and with a full knowledge of conditions made the radical change in the character of its re-enactment of the exclusion laws, which the Act of 1902 presents, to wit, re-enactment *only in so far as consistent with treaty obligations.*

The attention of Congress had been drawn to statutory violations of the Treaty of 1894 by Honorable John W. Foster, counsel for the Chinese Minister. The matter of these violations was discussed at some length before the Immigration Committee of the Senate.

> See Senate Document (Rep't, 776, Part 2, Testimony taken before Committee on Immigration on bills before Committee providing for Chinese exclusion, 1902, pp. 44 *et seq.*, & 97).

Hence, this clause in the Act of 1902 was the product of a careful inquiry and investigation into the subject of the invasion of treaty rights of Chinese residents in the United States, and it indicates that hereafter, as to Chinese residents, Congress intended to abide by treaty obligations.

A CONSTRUCTION WHICH SEEKS TO EFFECTUATE TREATY OBLIGATIONS SHOULD BE SOUGHT AFTER RATHER THAN THE CONTRARY.

> "Aside from the duty imposed by the Constitution to respect treaty stipulations when they become the subject of judicial proceedings, the Court cannot be unmindful of the fact that the honor of the Government and people of the United States is involved in every inquiry, whether rights secured by such stipulations shall be recognized and protected."
>
> Chew Heong *v.* U. S. (112 U. S., 536).

> "We ought, therefore, to so consider the Act, if it can reasonably be done, so as to further the execution and not to violate the provisions of the treaty."
>
> U. S. *v.* Gue Lim (176 U. S., 459, 465).

The question here is, What did Congress mean by this provision in the Act of 1902? "A reasonable construction such as will effectuate the legislative intention * * * so as to avoid an unjust and absurd conclusion" is what is sought.

In view of the recognition of the binding force of treaty obligations by Congress, a construction which would give effect to both act and treaty must be had.

Whitney *v.* Robinson (124 U. S., 190, 194).

In arriving at a proper construction, the Courts may take into consideration the earlier legislation and the surrounding conditions. The earlier acts were, as is above pointed out clearly in conflict with treaty obligations. But in the enactment of 1902 Congress recognized the force and purpose of clause 4 of the Treaty of 1894, wherein it was agreed that

> "Chinese laborers or Chinese of any other class either permanently or temporarily residing in the

> United States shall have for the protection of their persons and property all rights that are given by the laws of the United States to citizens of the most favored nations, excepting the right to become naturalized citizens."

These words have a plain meaning. This Court has only to follow the strict letter of this clause, to give to Section 1 of the Act of 1902 the meaning which the appellants contend for, to wit, that it was intended thereby to give to Chinese residents the rights which all other alien residents had. It follows as a natural sequence that statutes which discriminated against Chinese residents were impliedly repealed.

Section 3 of the Act of 1892 providing that Chinese persons arrested under the provisions of that act or the acts extended shall establish by affirmative proof to the satisfaction of such judge * * * their lawful right to remain here, is a discrimination against Chinese residents. It violates Clause 4 of the treaty of 1894. No other resident aliens are subject to such a burden.

Hence there is a positive repugnance between this provision and a later act which provides in effect that Chinese residents shall not be discriminated against.

Therefore this provision of the Act of 1892 is repealed to the extent of its repugnance, to wit, in so far as requiring Chinese residents of the United States to establish by affirmative proof, their right to remain here.

> See Wood *v.* U. S., 16 Pet., 342, 363.
> U. S. *v.* Tynan, 11 Wall., 88.
> South Carolina *v.* Stoll (17 Wall., 425).

The Courts have drawn a distinction between an alien who remains here and one who has left here and seeks to return. "While he (an alien) lawfully remains here he is entitled to the benefit and guarantees of life, liberty and property secured by the Constitution to all persons of whatever race within the jurisdiction of the United States. His personal rights when he is in this country and such of his property as is here during his

absence are as fully protected by the Supreme law of the land as if he were a naturalized citizen of the United States. But when he has voluntarily gone from the country and is beyond its jurisdiction, being an alien, he cannot re-enter the United States in violation of the will of the Government, as expressed in enactments of the law-making power."

Len Moon Sing *v.* U. S. (158 U. S., 547-548).
U. S. *v.* Wong Kim Ark (169 U. S., 700).

What rights are given by the laws of the United States "to citizens of the most favored nations?"

The treaty of 1894, with Japan provides that citizens or subjects of each country shall have free access to the Courts of Justice in pursuit or defense of their rights; they shall be at liberty with native citizens or subjects to chose and employ lawyers, advocates and representatives to pursue and defend their rights before such courts and in all other matters connected with administration of justice they shall enjoy all the rights and privileges enjoyed by native citizens or subjects.

"In other words, subjects of Japan stand on an equality in our country with our own citizens."

P. 42 Senate Document above referred to

In the treaty of 1859 with Paraguay, it is provided that

> "The citizens of either of the two contracting parties in the territory of the other shall enjoy full and perfect protection for their persons and property, and *shall have free and open access to the Courts of Justice for the prosecution and defense of their just rights. They shall enjoy, in this respect, the same rights and privileges as native citizens;* and they shall be at liberty to employ, in all causes, the advocates, attorneys, or agents, of whatever description, whom they may think proper."

These are rights which §3, of the Act of ~~1902~~ 1892 denies to Chinese residents of the United States.

Under the act of 1902, in conjunction with the Treaty, Chinese subjects are entitled to the same lawful protection that the subjects of either of these two nations are entitled to and surely a statute which requires them to sustain the burden of proof of their right to remain here after having resided here for years is not in accord with either of the provisions above quoted. These clauses of the Acts of 1892 and 1893 are a discrimination against Chinese residents, alone. As to Chinese persons seeking admission there is no question of the right of Congress to enforce such a provision, but as to Chinese residents of the United States this provision, it is our earnest contention that under the law of 1902, under the Treaty of 1894 with China, and the treaties with Japan and Paraguay above referred to, these clauses are positively repealed. Otherwise the phrase in the act of 1902 means nothing.

This construction, we contend, is reasonable and just. It is not only within the spirit of the Act of ~~1893~~ 1892 and the treaty of 1894 but within the letter thereof. It is a much narrower construction of the act and Treaty, than the construction of Section 6 of the Act of 1884 adopted by this Court in the case of Lan Ou Bew, 144 U. S. 47, where it was held:

> "That although the literal wording of the Statute of 1884, Section 6, would require a certificate in the case of a merchant already domiciled in the United States and who had left the country for temporary purposes, *animo revertendi*, yet its true and proper construction did not include his case, and the general terms used in the Act were limited to those persons to whom Congress manifestly intended to employ them, which would be to those who were about to come to the United States for the first time and not to those Chinese merchants already domiciled in the United States who had gone to China for temporary purposes only, with the intention of returning."

Neither is appellant's construction as narrow as that adopted in the Gue Lim case, *supra,* where it was held that:

> "While the literal construction of the Section (Section 6, of 1884) would require a certificate from every Chinese person other than a laborer who should come into the country, yet such a construction leads to what we think an absurd result, for it requires a certificate for a wife of a merchant among others, in regard to whom it would be impossible to give the particulars which the statute requires shall be stated in such certificate."
>
> U. S. *v.* Gue Lim, 176 U. S., 467.

It is further contended that under the "favored nation" clause as adopted by the Act of 1902, Chinese residents of the United States are now entitled to the same rights and privileges that citizens of the United States have. They shall not be deprived of life, liberty or property without due process of law. They are entitled to the protection which Article 4 of the amendments to the federal constitution guarantees.

> "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrant shall issue, but on probable cause supported by oath and describing the place to be searched or the persons or things to be seized."

The effect of this clause in the Act of 1902 is to give renewed force and vigor to the dissenting opinion of Mr. Justice Brewer in the Fong Yue Ting case, where he says:

> "Deportation is a punishment which involves, first, an arrest, a deprival of liberty; and second, a removal from home, from family, from business, from property. * * * It needs no citation of authorities to support the proposition that deportation is punishment. But punishment implies a

> trial. No person shall be deprived of life, liberty or property without due process of law. Due process requires that a man be heard before he is condemned, and both heard and condemned in the due and orderly procedure of a trial, as recognized by the common law from time immemorial."

It was said in this Court, by Mr. Justice Bradley, in defining due process of law in Davidson *v.* New Orleans, 93 N. Y., 97, 107:

> "If found to be suitable or admissible in the special case, it will be adjudged to be due process of law, but if found to be arbitrary, oppressive and unjust, it may be declared to be not due process of law."

Surely under these doctrines, these Chinese residents have been deprived of due process of law; to the protection of which Constitutional guarantee they are now clearly entitled.

> "Constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half of their efficacy and leads to a gradual depreciation of the right as if it consisted more in sound than in substance."
>
> Boyd *v.* U. S., 116 U. S., 616, 635.

Mr. Justice Field, in his dissenting opinion in the Fong Yue Ting case, referring to the provision for failure to produce a certificate of residence, required by Section 6 of the Act of 1892 as amended, said, referring to the deportation of Fong Yue Ting, a resident:

> "His deportation is thus imposed for neglect to obtain a certificate of residence, from which he can only escape by showing his inability to secure it from one of the causes named. That is the punishment for his neglect, and that being of an infamous character, can only be imposed after indictment,

> trial and conviction. If applied to a citizen, none of the justices of this court would hesitate a moment to pronounce it illegal. Had the punishment been a fine or anything else than of an infamous character, it might have been imposed without indictment; but not so now; unless we hold that a foreigner from a country at peace with us, though domiciled by the consent of our government, is withdrawn from all the guarantees of due process of law prescribed by the constitution, when charged with an offense to which the grave punishment designated is affixed."

Whether or not this was the effect which the Statute of 1892 had, it would seem to be clear that now Congress was of the opinion that the provisions of the Act of 1892 and 1893, which have never been defended in this Court, as a wise or just or humane measure, were clearly too oppressive as against Chinese residents of the United States, and for that very reason should be repealed.

The provision as to compulsory registration of Chinese laborers residing in the United States (Sect. 6 of the Laws of 1892 as amended by Laws of 1893) is as unfairly discriminating as is Section 3. This notwithstanding the fact that these provisions have been sustained in this Court in the Fong Yue Ting case. Certainly the subjects of no other nation are so discriminated against.

Though by Article V of the treaty of 1894 there seems to be a consent to the enforcement of these registration acts, it appears merely that the Chinese Government did not object to the enforcement of the same in so far as they were designed merely with a view of affording better protection to Chinese laborers in the United States in 1892.

To contend that this clause had any wider scope would be to urge that all of the provisions of that act were acceptable to China including, as well as any other, Section 4 of the Act of 1892, providing for imprisonment of Chinese persons, "convicted and adjudged to be not lawfully in the United States," includ-

ing of course laborers who failed to register, which section was held to be violative of the 4th and 5th Amendment to the Federal Constitution.

Wong Wing *v.* United States, 163 U. S., 227.

Is it not more reasonable to conclude that the registration provisions were approved of only in so far as they were approved of by Mr. Justice Field in the Fong Yue Ting case, where he says, at page 753:

> "The purpose of this section (§6, Act of 1892) was to secure the means of readily identifying the Chinese laborers present in the country and entitled to remain from those who may have clandestinely entered the country in violation of its laws. Those entitled to remain, by having a certificate of their identification, would enable the officers of the Government to readily discover and bring to punishment those not entitled to enter but who are excluded."

And that its sentiments as to the provisions for the deportation of residents were in line with those advanced by Mr. Justice Field in the same opinion?

POINT II.

The objection as to the sufficiency of these complaints is not affected by the decision in the case of Chin Bak Kan, 186 U. S., 193.

Upon this point the Court's attention is respectfully referred to the argument in the brief in opposition to the motion to dismiss, etc., at pages 15 and 16.

POINT III.

Neither the Act of 1892, nor the Act of 1893 amending it, required that Chinese persons who were merchants or who "were engaged in business rather than manual labor" should procure certificates of residence during the period when the registration provisions were in force.

Upon this point the Court's attention is respectfully referred to the argument in the brief in opposition to the motion to dismiss, etc., at pages 16, 17, 18, 19 and 20.

POINT IV.

The doctrine enunciated in the case of U. S. v. Gue Lim et al, (176 U. S., 462), (as to wives and children of merchants not being called upon to produce certificates), should be followed in the cases of Chu Do (No. 308) and Lew Guey (No. 309), who were children at the period when the registration provisions as to laborers were in force.

Upon this point the Court's attention is respectfully referred to the argument in the brief in opposition to the motion to dismiss, etc., at page 21.

POINT V.

In the Yung Lee case (No 312) the Commissioner erred in not discharging the defendant and in not ordering that a certificate of residence be issued to him.

Upon this point the Court's attention is respectfully referred to in the argument in the brief in opposition to the motion to dismiss, etc., at page 22.

POINT VI.

Commissioner McGettrick had power to determine the question of citizenship (Chin Bak Kan v. U. S., 186 U. S. 193), and no statutory form of certificate or judgment being prescribed, the certificate delivered by the commissioner to the defendant Lew Guey (case No. 309) should have been admitted as an adjudication of his citizenship.

Upon this point the Court's attention is respectfully referred to the argument in the brief in opposition to the motion to dismiss, etc., at page 23.

POINT VII.

Upon the right to appeal.

The right to appeal in these cases was conceded by the Government in the Chin Bak Kan case (186 U. S., 193), and was so held by this Court.

The appeals involve the determination of treaty and constitutional questions, and under 26 U. S., Stat., §5, as amended, a direct appeal to this Court is permitted.

In the Lee Yen Tai case (185 U. S.), the appeal was taken to this Court by the Government and it is not unreasonable to urge that this fact should operate as an estoppel of the Government's claim that Chinese appellants should not be permitted to appeal to this Court for the redress of what they believe to be grievous errors.

In the case of U. S. *v.* Gue Lim, 176 U. S., 459, the appeal to this Court was also taken by the Government.

POINT VIII.

The orders appealed from should be reversed and the defendants discharged.

Respectfully submitted,

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